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12 ***Attorneys for Defendants***

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 YENDY HERNANDEZ HERNANDEZ, and
11 PRISCILA FERREIRA CAPUA, individuals,

Plaintiff,

Case No: 2:18-cv-02354-RFB-PAL

12 vs.
13

14 ANEURIS ENRIQUE CURIEL, an individual;
15 AVILA'S TOWING LLC, d/b/a JM
16 CLEANING SERVICES, a corporation; DOE
17 DRIVERS I-V; DOE OWNERS I-V, ROE
18 EMPLOYER, and ROE COMPANIES,

Defendants.

18 **NOTICE AND REQUEST FOR COURT ACTION**

19 NOTICE IS HEREBY GIVEN that Defendants are requesting a correction for the filing
20 under Doc. 35 (Notice of Withdrawal of Doc 31) [Defendant's Emergency Motion to Amend
21 Answer to Confirm to Evidence, Assert Counterclaim and Affirmative Defenses]. The actual
22 withdrawal was meant to withdraw Doc. 32 [Defendants' Emergency Motion to Extend Discovery
23 (Fourth Request)].

24 This Notice and request for Court is made and based upon the Points and Authorities
25 cited herein.

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1 **POINTS AND AUTHORITIES**

2 **History of Filings**

3 On January 23, 2020, Defendants filed their Emergency Motion to Amend Answer to
4 Conform to Evidence, Assert Counterclaim and Affirmative Defenses [Doc 31].

5 On January 23, 2020, immediately thereafter, Defendants filed their Emergency Motion to
6 Extend Discovery (Fourth Request) [Doc. 32].

7 On January 24, the Court issued the following Minute Order:

8 The court has reviewed ECF Nos. 31 and 32 and determined that they will not
9 be considered on an emergency basis. IT IS THEREFORE ORDERED that
responses and replies are due in the ordinary course.

10 On February 26, 2020, Plaintiffs filed a Limited Opposition to Defendant's Emergency
11 Motion to Extend Discovery [Doc. 34].

12 On February 23, 2020, Defendants' counsel instructed its legal staff to file a Notice of
13 Withdrawal of the Emergency Motion to Extend Discovery. However, the legal staff member,
14 simply re-filed the Motion to Amend Answer to Conform to Evidence, Assert Counterclaim and
15 Affirmative Defenses, and titled it Withdrawal of [31] Motion to Amend Answer to Conform to
16 Evidence, Assert Counterclaim and Affirmative Defenses, and titled it Withdrawal of [31] Motion
17 to Amend Answer (as evidenced by Exhibit "A" which is filed stamped right over Doc. 31 with
18 Doc. 35 stamp).

19 On Tuesday, March 24, 2020, counsel received the Court's Minute Order setting Doc 32,
20 Defendant's Emergency Motion to Extend Time for hearing on April 8, 2020, and it was at that
21 time the mistake was caught by the undersigned.

22 **REQUEST FOR ACTION BY THE COURT**

23 There was an inadvertent mistake by defense counsel. Specifically, defense counsel
24 was unaware of the fact that her legal staff inadvertently filed a document (the wrong motion of
25 two contemporaneously filed motions), and effectively withdrew the wrong motion. Specifically,
26 Defendants' Motion to Extend Discovery should have been withdrawn - **not** Motion to Amend. It
27 is believed the inadvertent mistake was made due to the two motions filed contemporaneously
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(Motion to Extend Discovery and Motion to Amend).

On the basis of inadvertence, defense counsel is respectfully requesting the Court allow counsel to correct the mistake, and allow Defendants to withdraw the Motion (and recent hearing setting) on the Motion to Extend Discovery, which was Defendants' original intention. Further, counsel would respectfully request that the Court allow counsel to place the Motion to Amend back on calendar for the Court's consideration, which was Defendants original intention.

Counsel respectfully requests the Court entertain these requests to effectuate Defendants' original intent with respect to the withdrawal of the Motion to Continue Discovery (with inadvertent confusion due to filing of the concurrent motions by defense counsel staff) in the manner which the Court deems appropriate. Counsel is requesting that, if possible and in the interest of judicial economy, the hearing scheduled for April 8, 2020 go forward with respect to Doc 31 (Motion to Amend). Counsel further advises the Court that based on prior conversations with counsel for Plaintiffs, Steve Lewis, Plaintiffs did not intend to oppose the Motion to Amend.

DATED this 27th day of March, 2020.

IT IS ORDERED that ECF No. 32 is withdrawn.

DENNETT WINSPEAR, LLP

IT IS FURTHER ORDERED that the hearing scheduled for 4/8/2020 on ECF No. 32 is VACATED.

By /s/ Ryan L. Dennett

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IT IS FURTHER ORDERED that the court will consider ECF No. 31, as it was withdrawn in error.

IT IS FURTHER ORDERED that ECF No. 31 is GRANTED under LCR 47-3. IT IS SO ORDERED

DATED: March 30, 2020

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5 and LR 5-1, I certify that I am an employee of DENNETT WINSPEAR, LLP, and that on the 27th day of March, 2020 the foregoing **NOTICE AND REQUEST FOR ACTION** was served upon the parties via CM/ECF system to the following parties:

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/s/ Theresa Amendola
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